



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12 VAC 5-462-10 et seq.
Regulation title	Swimming Pool Regulations Governing the Posting of Water Quality Results
Action title	Amend Regulations to include other water recreational facilities
Date this document prepared	December 9, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The State Board of Health ("board") adopted the Swimming Pool Regulations Governing the Posting of Water Quality Results (the "regulations") in 1994, but the board has not amended them since. Currently, the water quality posting requirements in the regulations are applicable to only public swimming pools. These planned regulatory actions will amend the regulations to require compliance with the water quality test results posting requirements for other water recreational facilities open to the public where there is body contact with the recirculation of water, such as spray facilities, fountains, etc.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 32.1-12 of the *Code of Virginia* authorizes the board to make, adopt, promulgate and enforce regulations that may be necessary to carry out the provisions of title 32.1 and other laws of the Commonwealth administered by the Board or the State Health Commissioner ("Commissioner"). The enabling law found in § 32.1-248.1 mandates that the board promulgate regulations that require the daily

posting of water quality test results at swimming pools and other water recreational facilities operated for public use or in conjunction with a tourist facility or health spa.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulations are essential as they provide standards designed to ensure compliance with § 32.1-248.1 of the Code so as to protect public health and safety. However, in order for the board to effectively carry out its public health responsibilities under title 32.1 of the Code, these regulations need to be revised and amended to require other public water recreational facilities not currently regulated to post water quality results. More water recreational facilities, other than swimming pools, are in use today. There is currently no requirement in the regulations for these facilities to post water quality results.

The Centers for Disease Control and Prevention (CDC) states on its website (<http://www.cdc.gov/healthywater/swimming/rwi/>) that recreational water illnesses (RWIs) are caused by germs spread by swallowing, breathing in mists or aerosols of or having contact with contaminated water in swimming pools, hot tubs, water parks, water play areas, interactive fountains, lakes, rivers or oceans. RWIs can also be caused by chemicals in the water or chemicals that evaporate from the water and cause indoor air quality problems.

RWIs can be a wide variety of infections, including gastrointestinal, skin, ear, respiratory, eye, neurologic and wound infections. The most commonly reported RWI is diarrhea. Diarrheal illnesses can be caused by germs such as Crypto (short for *Cryptosporidium*), *Giardia*, *Shigella*, *norovirus* and *E. coli O157:H7*. In the past two decades, there has been an increase in the number of RWI outbreaks associated with swimming.

The amendments to the regulations will allow users of recreational water facilities to view the water quality testing results of the facility prior to using the facilities.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

In response to complaints received from the public, the board needs to revise and amend the regulations to require other public water recreational facilities not currently regulated to post water quality results. An example would include a recreational spray facility where water is sprayed on bathers and collected in drains and then re-circulated. Section 32.1-248.1 of the Code provides the authority to regulate such facilities as it mandates that the board promulgate regulations to require the daily posting of water quality test results at swimming pools and *other water recreational facilities* operated for public use or in conjunction with a tourist facility or health spa.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the

agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

These regulations are mandated by the Code. The other available alternative is to continue with the current regulations, but in light of the complaints received from the public about public water recreational facilities not required to post water quality information and the mandates contained in § 32.1-248.1 of the Code, the board determined that amending the current regulation to require these facilities to post water quality test results for users to view will better enable the board to effectively carry out its public health responsibilities under title 32.1 of the Code.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and, 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code. Information may include 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and, 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Gary L. Hagy, Director, Division of Food and Environmental Services, 109 Governor Street, Richmond, VA 23219, 804-864-7455, Fax 804-864-7475, or via email at gary.hagy@vdh.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

The agency will hold a public hearing; notice of the hearing will be posted on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency will work with pool and spa associations, operators of recreational water parks and other interested parties in developing the amendments to these regulations. All interested parties who would like to participate should notify and provide contact information to Gary L. Hagy, Director, Division of Food

and Environmental Services, 109 Governor Street, Richmond, VA 23219, 804-864-7455, Fax 804-864-7475, or via email at gary.hagy@vdh.virginia.gov.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will positively impact families by providing effective guidance for swimming pools and other water recreational facilities operated for public use or in conjunction with a tourist facility or health spa to comply with the statute that requires the daily posting of water quality test results at swimming pools.

- 1) The proposed modification of these regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed modification of these regulations will neither encourage nor discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents.
- 3) The proposed modification of these regulations will neither strengthen nor erode the marital commitment.
- 4) The proposed modification of these regulations will neither increase nor decrease disposable family income.

Periodic review

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

- 1. No comments were received during the comment period following the publication of the Notice of Periodic Review.
- 2. The amended regulations will meet the criteria set out in Executive Order 14 (2010). The amended regulations will be clearly written and easily understood. The regulations, as amended, are also necessary for the board to carry out the provisions of title 32.1 of the Code so as to protect public health and the environment. The development of the regulations will consider the best reasonably available and reliable, scientific, economic, and other information concerning the need for, and consequences of, the regulations. The amended regulations will achieve their

intended objective in the most efficient, cost-effective manner. In addition, the amended regulations will be in accordance with statutory provisions related to impact on small businesses. Further, the amended regulations will not adversely impact existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will not include a review of the entire regulation for small business impact, please delete this entire section.

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The board has not amended these regulations since they were adopted in 1994. These regulations continue to be necessary to protect public health and the environment. The regulations are very basic and not complex. The regulations only require the daily posting of water quality test results that the operator should be conducting at least daily. VDH's Division of Food and Environmental Services will evaluate amendments to the regulations, as well as existing sections that are not revised to minimize economic burdens on small businesses.